2011 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1471

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1471
January 24, 2011
Job # 13308

☐ Conference Committee

Committee Clerk Signature Marlys Kienzle

Minutes: No "attached testimony."

Chairman Kaiser: Opened the hearing for HB 1471 and asked Rep. Kelsh to testify.

Rep S Kelsh State Representative of Fargo: He stated that he brought bill 1471 back because it was brought to the 2009 session. It passed the House but didn't make it past the Senate. The problem did not go away so I felt it should be brought up again. Rep Kelsh explained that the bill removes the exemption of a building permit for unheated and un-cooled buildings. What this simply says if you are putting up a large storage shed over 120 square feet, because a building less than 120 square feet along with agriculture buildings are exempt under the building code. They will remain exempt under this bill. What is happening is large buildings are being built for campers, RV's and snowmobiles, boats and so forth, in subdivisions that do not fall in jurisdiction of a political subdivision that has adopted a uniform building code. Many times they are built up to the property line and can cause a fire hazard. They may not always be built according to specification, as the footings may not go below the frost line, and there are no checks and balances from the local political subdivisions that those building codes are met. So the adjoining properties may be at risk as well, as the building itself.

Rep Ruby: What were the reasons it failed in the Senate?

Rep S. Kelsh: There was some misunderstanding as to what the bill actually did and that it was going beyond what the political subdivisions had the right to do.

Rep Vigesaa: Is this the exactly the same bill that was present last session?

Rep Kelsh: Word for word.

Chairman Kaiser: Do cities with limited Home Rule Charters, can they currently require a building permit for these structures?

Rep Kelsh: Any city that has adopted a uniform building code, whether it is Home Rule or not has the authority to enforce their building code and permitting process.

Chairman Kaiser: Is this part of the uniform building code?

Rep Kelsh: As far as I know yes.

Shawn Kessel: He is here to testify in behave of the city of Dickinson and on behest of our Building Inspector, Mel Zent who is a member of the North Dakota Building Official Association. We are requesting a do pass on this bill. The city of Dickinson is experiencing a renaissance of sorts with the oil activity. We are doing our best to grow with reason decisions as we continue to grow. We are planning to add another building inspector, another fire inspector and a planner to help with the growth. One of things that happens as we grow and we take on annexations occur is we take on buildings and land that were not in the city limits and now become in the city limits. Any time you have structures that are not permitted through a building code inspection process, they become concerns. Because those buildings often times get there use changes as cities grow and as density becomes more compact. If they are not originally inspected and then cooling or heating is added the retrofit becomes very expensive and often time a building permit is not even requested and then becomes a bigger issue when we come upon them.
Other issues that come into play that are looked at during the building inspection process are set back requirements, lot cover requirements and building sprinkler systems.
Every building that is built needs to meet certain building requirements pertaining to size and type of construction and this would not be regulated without the issuance of a building permit. If the building would be exempt when built and later would be heated or cooled the cost to retrofit becomes very expensive due not meeting code to begin with.
We would request a do pass on HB 1471.

Doreen Rhedmen I am with the North Dakota Association of Builder and am representing the 2000 members across the state. We do support this legislation and supported last session as well. Most cities that member reside already require this of garages.

There was no one in opposition or neutral of HB 1471.

Chairman Kaiser: Closed the hearing.

Chairman Kaiser: Asked for the wishes of the committee.

Rep Kreun made a motion for due pass.

Rep Gruchalla seconded the motion.

Rep Kreun: I would like to make a quick comment. I think Shawn Kessel under estimated or under emphasized the problems that arise. It is extremely costly to the owner, it is a safety issue to the neighboring components, especially when they are brought into the city limits.

Do pass 13 yeas 1 naye and 0 absent with Rep M. Nelson as the carrier.

Date: Jan 24-2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1471

House **House Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

Motion Made By Kreun Seconded By Gruchalla

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe		✓
Representative Clark	✓		Representative Gruchalla	✓	
Representative Frantsvog	✓		Representative M Nelson	✓	
Representative N Johnson	✓				
Representative Kreun	✓				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 13 No 1

Absent 0

Floor Assignment Rep M Nelson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1471: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **DO PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1471 was placed on the Eleventh order on the calendar.

2011 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1471

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1471
February 8, 2011
Job Number 14202

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to the state building code.

Minutes: No Testimony

Senator Klein calls **the Senate Industry, Business and Labor Committee** to order.

Representative Kelsch, State Representative, District 11, Fargo. Supports and sponsored HB 1471. He states it simply takes away the exemption, from the state building code, for unheated and uncooled buildings. What is happening, as the growth and subdivisions occurs outside city limits, is that you are seeing lots of storage buildings that are not complying with the code. Those areas are then being annexed into cities; have to be retro-fitted, to comply with the building code. This bill "takes" the exemption away and "keeps" the exemption for agricultural buildings but does take away the exemption for unheated and cooled buildings for places that are used for storage. These buildings don't have footings that go down below the frost line and aren't complying with the building and fire codes. Therefore, they constitute a hazard or potential hazard for adjoining properties and for the building owners because the building owner did not know, what the building code was, at the time of construction.

Senator Klein asks if the folks out there are "grandfathered in?"

Representative Kelsch states that what is happening is that they are not "grandfathered in" and when the city annexes those properties; they are required to comply with the code. The building code is missing when it was first constructed. Once they are annexed into the city, they have to comply with the code and have to be retro-fitted.

Senator Klein states that they don't know they are going to be annexed into the city when they are 3 miles out of town and do to our "extraterritorial issues" is what has created the issue, has it not?

Representative Kelsch states, "That is correct. They don't know and that is why we would like to have that exemption, taken out of the code ,so that they do know that when they construct the building, that it will be required to meet the code.

Senator Klein states that HB 1471 was here last session.

Representative Kelsch states it was here last session, word for word.

Senator Andrist states, "I can see this as a nice fit for larger cities but I wondering if it has unintended consequences for the small towns". I don't know how rigid this building code is right now in small communities. In my area, they have not adopted a city code. It still applies to state codes. Could you tell me if building code would permit storage buildings?

Representative Klein states that anything up to 1200 sq. feet, I believe, is exempt from the state building code.

Senator Andrist states he is thinking of the large modular units that have several compartments and have over 1200 sq. feet total.

Representative Kelsch states that he believes these are "exempt" since they are modular. What is happening with areas, that have high growth, is that they are experiencing this. These buildings are right up against the lot line and there is development going on around them. Then the city annexes that area, and it becomes a potential hazard, to the adjoining land owner and adjoining property owner.

Senator Andrist asks, "You say it is right up against the lot line and if it is built in a rural area, you mean property line, because there are no lots. It appears to me that the lot lines, if the city is absorbing it, that the city should have to absorb these areas in their platting process to accommodate them, would they not?

Representative Kelsch states that is correct. They do accommodate the areas, that are being built are in subdivisions outside the city, and may or may not be platted. They are subdivided at some point and then adjoining property owners are affected by the construction. It is typically not a big cost to comply with the code but it does mean the footing have to be properly placed so there is not settling at the building. Also, that there are set- backs, so they are away from the property line and the fire hazard does not spread to adjoining properties.

Senator Andrist asks "If they built it, not for a living purpose, and the footings aren't adequate to meet code levels, what are you going to do, tear it down?

Representative Kelsch states that "no" he doesn't think that they will make them tear it down but there may be some shoring requirements.

Senator Andrist states it would be pretty hard to put new footings in.

Senator Nodland states he is from the Dickinson area. I am well aware of an issue with a subdivision that is being annexed. I am really concerned about HB 1471. Businesses, that are in that area, have been in that area for 30 years. Those businesses, most of them, are within code. The same building inspector that inspects for the city of Dickinson also inspects for the county of Stark. These businesses are long standing businesses.

Representative Kelsch states that if it is a business, that is occupied and has occupants during the business day hours, it is already not exempt. So what this does is, those large storage units that are being built, just outside the city, were brought to my attention by the Dickinson Building Code Inspector. I wish he was here today. They had a situation they had to deal with.

Senator Klein states that the issue, as I see it, is that the folks who have set up out there, built a little shop or a barn for the horses, are now falling under the reigns of the community, the city. Are we asking them to comply now?

Representative Kelsch states that agricultural buildings remain "exempt". If you have a horse, that is considered an agricultural use. It is simply large storage buildings for RV's, boats, etc.

Senator Klein closes the hearing on HB 1471.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1471
February 9, 2011
Job # 14203

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to the state building code.

Minutes: No Attached Testimony

The Senate Industry, Business and Labor Committee is having further discussion on HB 1471.

Bonnie Steiger, Executive Vice President of AIA, ND (American Institute of Architects). I wish to go on record that the AIA has always supported strong building codes. This is the third session that this issue has come up. I have referred to this bill as the "garage bill". Last session it came up on this side of the legislature. It started in the House and it took a nosedive in the Senate because of the questions that came up. What puzzles me is that it has the annexation issue added. I am concerned about this because of the "grandfathering piece". AIA ND wants to be realistic in its position on its building codes and the health, safety and welfare of the public. We are not taking a position on this bill. Despite that in the last two sessions, we have. The "grandfathering piece" and "annexation" into subdivisions needs to be addressed.

Senator Murphy states that the prime sponsor, Rep. Kelsch, indicated there was not a "grandfather clause" in this but indeed any building that fell into the code would need to be inspected and brought up to code.

Bonnie Steiger states, "I heard what you heard".

Chairman Klein states, "That is correct, it is my understanding, that there is no "grandfathering ". That if you have a shop or garage that is beyond 1200 sq. ft. and you don't have a horse in it or an old tractor in it, you will be compelled to "shore up your footings" and do what else is necessary to get it within the code. It means I should of asked and it will have to be moved 5 ft. from the property line. If it is on the property line and the code says, 5 ft. off, and you are not "grandfathered in", I think that would require you to be in compliance.

Senator Murphy states he was confused by is that he thought that maybe you thought there was a "grandfather clause". I understand that is not what you were saying. Is that correct?

Bonnie Steiger states that she was surprised that there was not a "grandfather clause" in this particular iteration. In previous sessions, it was not about annexation or "grandfathering" at all. It was strictly, rural buildings. I didn't read it that closely so I was startled to see that.

Senator Lafeen states he thinks this law already exists and there is no "grandfathering". So if you annex and there is a house and it comes into your annexed city, the house has to meet the current building code of that city. I think the purpose of this bill is so that these garages or large storage buildings, don't run into problems in the future. It is trying to let people know that, even those buildings, do need to meet the code. So if they do come into the city, they are not jeopardizing the rest of the city with not meeting code. So I think the purpose is to protect those people from having to do things later.

Senator Nodland states this is the issue I was talking about. In my territory, these buildings were built 30 years ago. This subdivision was built in the 70's and 80's. They went by the codes for the time and now the codes have changed dramatically. Now with without "grandfathering" this, these people will encounter expense and heartache for some of these people, who did it right when the built. There has to be some compromise. Going forward with this, is fine.

Senator Andrist states that to him it is totally misplaced democracy, that the city, should be able to direct something like this. I think this is a bad bill.

Senator Lafeen states he agrees with the discussion on "grandfathering" because I don't quite understand what this is doing, if that is the case.

Closed discussion on HB 1471.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1471
February 9, 2011
Job # 14354
☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to state building code.
Minutes:

No attached testimony

The Senate Industry, Business and Labor Committee discussed HB1471.

Senator Lafeen states that this bill came from Fargo Fire Dept. was looking to improve some things. He was hoping to be here and they didn't show up. The biggest issue with this bill is that there is no "grandfathering". It is unfair without a "grandfathering" clause. I asked the sponsor if he would fix that and he responded, no he was not that interested.

Senator Schneider asks, "Isn't that the case under existing law?" If we didn't pass this legislation, that those buildings would have to retrofit, once those communities were annexed by the larger community? I think that is a separate issue than this bill. I think that is happening now.

Senator Lafeen states that if you are outside the city of Fargo, you can build a garage, and not meet Fargo's building code technically. Now that they annex you in, this bill is saying you have to come up to Fargo's code.

Senator Schneider states that he may be mistaken on this but I think, under existing law, they would have to retro-fit after they were annexed. Under this, they are saying, if you build a garage now, you will have to make it to code so you will not have to retrofit once it is annexed.

Senator Lafeen states what this bill does say, "If you build a garage now, unheated or uncooled, and unheated and uncooled are brought into the code, whereas right now, they are not. So this law would require all those buildings, in the state, to be built to a code, if they are annexed. The requirement to retroactively bring a building up to a code, only happens when you have a remodeling of a certain percentage of it even if they are annexed in. I think.

Senator Klein states that we are applying law, rules, to folks who built a building, out in the country, built it to what they believed were the standards, and most likely, they had to pass electrical and plumbing. If we pass this, and even in the extra territorial areas, they would need to bring their buildings up to city code. That is what I understand.

Senator Nodland states that you are exactly right. That is the issue that I had yesterday. I am entirely against this. Mr. Chairman, I move to DO NOT PASS.

Motion for DO NOT PASS by Senator Nodland.

Seconded by Senator Andrist.

Senator Lafeen states he doesn't have any problem "killing the bill" but as I do read it and look at it again I agree with Senator Schneider I think all this bill really does "is say that unheated and uncooled bills in the future, need to be to state building code. That is all it really says.

Senator Schneider states, I think that is the intent of the bill. Cities right now, when they annex these buildings, are requiring retrofitting. If the bill does, what the committee thinks it does, I would probably vote against it, if it does what I think it does, I would vote for it.

Senator Andrist states that it is his opinion that the bill runs against basic fairness. This person has built this building out in the country, presumably applying with all safety and required codes. Now the city finds in their interest, that they would like to annex that into the city, so they are requiring him to do something to comply with their city codes. It doesn't seem fair.

Senator Schneider states that he agrees with that. That is going to happen no matter what we do with this bill.

Senator Murphy states he is unsure about the bill. So we are crossing out an exemption on Section 2, line 14, and everything is line out and this bill would take that out, correct? Am I correct? It takes it out. So we are getting rid of an exemption. So I thought the reason for the bill was because these building get annexed and then they have to be retrofitted for city code.

Senator Klein states the presenter suggested they fall into property line issues. That is what I also heard him say.

Senator Nodland states, "That is the exemption". Before, those buildings were exempted. How far do we go and tell people now you are building but you are in the country, but you better build to be prepared for annexing?

Senator Schneider states that even when these buildings are exempt from state building codes, when they get annexed by the city, they are no longer exempt the cities building code and they have to retrofit because of that. I am not sure about that.

Senator Klein asks, "Do you we have an outcry here that we need this?"

Senator Schneider states he doesn't feel cities should be requiring people to retrofit these buildings, when they were up to code in the first place.

Senator Murphy asks, "Is it possible that the proponents of this bill, would relax and not show up because it "sailed through the House?".

Senator Schneider asks if it is cheaper to build a building up to code to begin with than it is to retrofit it?

Senator Lafeen states "yes".

Senator Andrist states that he wants to point out that codes go well beyond health and safety issues.

Senator Lafeen help me with this. I am leaning against voting "no" on this bill because of the "unintended consequence". I think this makes a difference for larger towns. I think the unintended consequences is that there are a lot of these buildings that are never going to come into play.

Senator Klein believes that the "extraterritorial rules" are already in statute.

A motion for DO NOT PASS on SB 1471 from Senator Nodland and a second from Senator Andrist.

The vote is 6-1-0.

Date: 2-9-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1471

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Nodland Seconded By Senator Andrist

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider		✓
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 6 No 1

Absent _____

Floor Assignment Senator Andrist

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1471: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO NOT PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1471 was placed on the Fourteenth order on the calendar.